

COUNTY OF CHARLESTON                 )  
STATE OF SOUTH CAROLINA          ) MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding entered between and among Kiawah River Utility Company ("KRUC"), Kiawah River Utility Holdings, LLC ("KRUH") and Kiawah River Investment, LLC (KRI") this 7<sup>th</sup> day of August, 2019.

WHEREAS, KRUC has been established to own and operate the new wastewater treatment facilities for a large planned unit development project in Charleston County known as Kiawah River that is owned and being developed by KRI;

WHEREAS, KRUC is wholly owned by KRUH, and KRUH is wholly owned by KRI;

WHEREAS, KRI spent in excess of \$8.5 million dollars in permitting, designing, and constructing the wastewater treatment plant and all the related facilities needed to operate the plant and serve the development of Kiawah River;

WHEREAS, because KRI is in the initial stages of the development of Kiawah River, there are currently few users of the sewer services and the customer base is projected to grow gradually over time;

WHEREAS, KRUC seeks the establishment of initial rates and charges for its customers for sewage collection, treatment and disposal service that does not cause the customers in the early years of the development of Kiawah River to pay excessive rates that would be necessary if the customers were to bear the total cost of service in the initial years;

WHEREAS, the initial rates and charges that KRUC has requested be approved by the Public Service Commission of South Carolina (the “PSC”) are modeled on the basis of a “complete

system” analysis that establishes the projected costs for utility service and resultant rates for a full complement of customers at buildout;

WHEREAS, during the growth years, KRUC will also not fully recover the capital costs through annual depreciation or earn a return on the net investment rate base, essentially absorbing those costs as a non-cash form of subsidy; over time, the revenues will increase enough with customer growth to cover out of pocket expenses and, eventually, KRUC will begin to recoup the cost of the assets through depreciation and KRUH will begin to earn a return on its equity investment in KRUC;

WHEREAS, the initial rates and charges KRUC is requesting will not cover the costs of operation of KRUC until the occurrence of the factors described in the preceding paragraph; and,

WHEREAS, KRI and KRUH seek to assure the financial viability of the operation of KRUC by agreeing to cover operating deficits as set forth below.

NOW, THEREFORE, KNOW MEN BY THESE PRESENTS, that KRI, KRUH, and KRUC, in the exchange of mutual promises herein and other good and valuable consideration, agree as follows:

1. Operation of Sewer Utility. KRUC shall operate the sewer utility in a manner that provides adequate sewer service to all users/customers in Kiawah River, including but not limited to, operating the wastewater treatment plant and all related facilities in accordance with its permits and according to all applicable regulatory requirements of the South Carolina Department of Health and Environmental Control (“DHEC”) and the PSC; responding in a timely and diligent manner to requests for service, repairs, or maintenance that may arise in the provision of such sewer services; and fully cooperating

with KRI in the construction and operation of new sewer infrastructure to make sure that sewer service is immediately available when needed as new development is planned to occur and does occur.

2. KRI Financial Support. KRI shall advance through KRUH any operating deficits of KRUC on an as-needed basis. Cash advances that cover operating expenses shall be treated on KRUC's books as paid-in capital. Advances to funding the cost of utility plant or the transfer of utility plant assets funded by the parent or developer shall be properly recorded on KRUC's books as Advances in Aid of Construction representing KRUH's investment in KRUC, not contributions in aid of construction. It is recognized that the operating deficits during the growth years that are covered by the cash advances by the parent or developer are, in effect, costs attributable to the real estate project, assuring that KRUC's customers will pay through the rates for only the cost of providing utility service. Such advances by KRI are entirely to sustain KRUC to assist it, along with future inflationary rate increases, in ultimately being capable of maintaining financial viability and attracting capital in order to assure the provision of continuously adequate service on the strength of its own financial condition.
3. Term of MOU. This Memorandum of Understanding shall continue until KRUC has sufficient revenues from customer billings to cover operating expenses as well as the capital costs of the utility business.
4. Amendment. This Memorandum of Understanding cannot be modified unless the amendment is in a writing signed by both KRI and KRUC.
5. Choice of Law. This Memorandum of Understanding shall be governed by the laws of South Carolina without regard to conflict of law principles.

6. Integration/Merger. This Memorandum of Understanding contains the complete, integrated agreement of the parties hereto. All prior negotiations, representations, and understandings about its subject are of no force and effect and are merged herein.

SIGNED, SEALED, AND DELIVERED by the undersigned on the dates below.

**[SIGNATURE PAGE TO FOLLOW]**

**KIAWAH RIVER UTILITY COMPANY**, a South Carolina corporation

By: 

Name: Tyler E. Cooper

Title: Treasurer & Secretary

Date: AUGUST 7, 2019

**KIAWAH RIVER UTILITY HOLDINGS, LLC**, a South Carolina limited liability company

By: Kiawah River Investment, LLC

Its: Sole Member

By: Beach O'Hear Pointe, LLC

Its: Managing Member

By: The Beach Co.

Its: Manager

By: 

Name: John C.L. Darby

Title: President

By: 

Name: Tyler E. Cooper

Title: Vice President

Date: AUGUST 7, 2019

**KIAWAH RIVER INVESTMENT, LLC**, a Delaware limited liability company

By: Beach O'Hear Pointe, LLC

Its: Managing Member

By: The Beach Co.

Its: Manager

By: 

Name: John C.L. Darby

Title: President

By: 

Name: Tyler E. Cooper

Title: Vice President

Date: AUGUST 7, 2019